

Internal Revenue Service

Department of the Treasury

District  
Director

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:  
EP/EC

Date: NOV 25 1988

NO RESPONSE TO  
30 DAY LETTER.  
CLOSED BY REVIEW 1-6-89

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 because you are an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]  
[REDACTED]  
[REDACTED]  
District Director

Enclosures: 3

[REDACTED]  
(hereinafter referred to as the Association)

#### Facts

The Association was formed as an unincorporated association. The forward to its Constitution indicates the Association was organized on [REDACTED] [REDACTED], and the Secretary/Treasurer of the Association executed a declaration indicating the By-Laws were adopted on [REDACTED] [REDACTED]. The Constitution and By-Laws were submitted as a singular [REDACTED] page document executed by the President and Secretary/Treasurer of the Association.

The following purposes are indicated in the Article II of the Constitution entitled "Objects", which states the following:

The objects of this corporation are: 1) To establish a permanent non-profit corporation and to promote friendship for those interested in the collection, possession, and use of arms and their accessories by responsible persons;

2) To make a united stand in opposing legislation that may be injurious to the collection, possession, and use of arms by responsible persons;

3) To establish regular meetings where

a) Club business may be transacted.

b) Members may display arms and accessories, and exchange such arms and accessories in accordance with local and national laws.

c) Members may assist each other in locating and acquiring arms and accessories of the types which interest them most.

4) To establish, uphold, and promote the highest ethical standards in our activities.

The application and correspondence indicates that the Association basically has had two major activities: regular monthly meetings and two or three weekend-long gun shows each year.

The forward to the Constitution and By-Laws describes the monthly meetings as follows:

The majority of the club members are from the [REDACTED] vicinity. Twelve meetings per year are held, presently meetings are held in [REDACTED] [REDACTED] centrally located for majority of our members.

[REDACTED]

The [REDACTED] encourages its members to bring and display rare and unusual items from their collections. Our meetings are not open to the general public, but are open to:

A) Members in good standing of [REDACTED], Affiliated arms collectors organization.

B) Guests as defined in the next article following this one.

C) Persons in the immediate family of [REDACTED] A. member.

The application and correspondence present the following facts about the gun shows. The gun shows have been held at [REDACTED]. The shows are open to the general public. The admission fee for Adults is [REDACTED] dollars, while children under twelve are admitted free of charge. Exhibitors at the gun show can be either members or nonmembers and rent display space at the following rates: members one day - [REDACTED] dollars; two days - [REDACTED] dollars; nonmembers one day - [REDACTED] dollars; two days - [REDACTED] dollars. The Association indicated that fifty percent of the exhibitors display their collections for strictly historical and educational purposes and the other fifty percent are selling guns, knives and other related equipment. The educational exhibitors and selling exhibitors pay the same rates for display space and all displays are presented in the same area.

The Association has extensive rules governing safety and permitted exhibits. The safety rules are designed to ensure all items at the show are displayed and handled in a safe and legal manner. The rules on permitted exhibits give detailed conditions of what items may be included in an exhibit. The displays can include small arms and related accessories and a wide variety of shooting equipment such as targets, spotting scopes, bullet traps, and many other items along these lines. Tools and parts for repair of arms can be displayed as well as ammunition and reloading equipment. Various edged weapons can be displayed; the rules indicate that these should be specialty items normally not found on the open market that would be of interest to collectors. Various military and miscellaneous items can also be displayed such as headgear and uniforms, related books and art, archery equipment and cap guns. The items listed above are only a part of what the rules permit, but it provides a general idea of what can be displayed at the gun shows.

The Association does not receive any commissions from the shows, only rent for display space. Its members provide about [REDACTED] hours of volunteer labor for each show. The Association advertises the shows with classified newspaper ads and flyers. The advertising is directed over a wider area than just the local community. The Association does not have records concerning whether those selling merchandise are professional dealers or just hobbyists, and it estimates only [REDACTED] percent of those selling are from the community.

[REDACTED]

The gun shows have regularly shown a profit and have been the primary source of income for the Association. The following information is presented to show the Association's income pattern for the past several years.

Year	Gun show gross income	Gun show net income	Association gross income
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Association estimates that [REDACTED] percent of the gross income received from the gun show is from nonmembers and the balance is from members. The Association also receives membership dues in the range of \$ [REDACTED] in [REDACTED] up to \$ [REDACTED] in [REDACTED]; and investment income from \$ [REDACTED] in [REDACTED] up to \$ [REDACTED] in [REDACTED]. The Association lists only one asset on its balance sheet, which is cash in interest bearing accounts. This increased from \$ [REDACTED] in [REDACTED] to \$ [REDACTED] by [REDACTED]. The financial statements also indicate the Association donates \$ [REDACTED] each year to the [REDACTED], which is a tax exempt organization under section 501(c)(4). Any other use of funds is for the purposes indicated by the association in its correspondence stating, "profits and funds are used to cover operating expenses and benefits that membership to club offer. ie (Dinner meetings, club hats, patches, badges etc.)".

#### LAW AND ANALYSIS

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) of the Regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

It is difficult to ascertain which of the two major activities of the Association, the monthly meetings or the gun shows, are the primary activity. The monthly meetings occur more frequently, but the gun show represents the Association's public contact and is the primary source of the Association's funds. By demonstrating that neither activity would satisfy the requirements for exemption under section 501(c)(4) of the Code, the question of which is the primary activity becomes moot. So both of the Association's major activities will be considered.

Concerning the gun show activity, we rely on Club Gaona, Inc. v. United States, 167 F. Supp. 741 (1958), which considered an organization that started out with the purpose of developing the youth of Mexican ancestry into responsible citizens. In later years the organization's principle activity was the promotion of regular public dances, which resulted in growing profits that became its major source of income. The club used these profits for speculative real estate dealings. The court held that the organization was no longer exclusively engaged in social welfare activities as its profits were devoted to the accumulation of funds which were not used for ascertainable civic projects.

The Association, on the other hand, relies on Rev. Rul. 78-131, 1978 - 1 C.B. 157, which provides that a nonprofit organization whose purpose is to develop and encourage interest in painting, sculpture, and other art forms by conducting, in a noncommercial manner, a community art show qualifies for exemption as an organization operated exclusively for the promotion of social welfare under section 501(c)(4) of the Code.

The Association compares its gun show activity to an art show described in Rev. Rul. 78-131, cited above, which found the organization was exempt under section 501(c)(4). There are some notable differences between the art shows of Rev. Rul. 78-131 and the Association's gun shows that indicate the gun shows are operated in a commercial manner. The general public must pay admission to attend a gun show. The gun shows lack a community orientation because they are advertised beyond the local community and only [REDACTED] percent of the dealers participating in the shows are from the community. Unlike the art shows, the educational displays and the displays of dealers making sales are all in one section. Without any segregation of the two activities it is difficult to substantiate that there are displays meant to be strictly educational. Nothing prohibits any participant renting display space from selling the items on display anywhere in the shows. Also many of the items that can be displayed at the gun shows are not educational, but could be merchandise that an exhibitor could sell for personal

[REDACTED]

profit The gun show seems similar to a flea market for those interested in selling or obtaining weapons and military paraphernalia. Similar to the dances in Club Gaona, Inc. v. The United States, the gun show has been regularly profitable for the Association, and the profits have been held and invested for the benefit of the members. The gun show activity does not serve a purpose that would justify exemption under section 501(c)(4).

Next we will consider the monthly meetings. The monthly meetings are limited to the Association's members, their immediate families, and members of [REDACTED] arms collectors organizations. The Association compares itself to the organization in Rev. Rul. 66-273, 1966 - 2 C.B. 22, which provides that a nonprofit organization may qualify for exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954 where it provides a community with facilities for rifle, pistol and shotgun practice and instructions in the safe handling and care of weapons. These activities were held to promote the common good and general welfare of the community within the meaning of 501(c)(4) of the Code. The Association maintains, in its correspondence, that it "...spends the majority of its time during its monthly meetings on these sorts of activities, but only a couple of weekends a year on the gun shows". The facts presented do not support this contention. According to the Association's attendance rules the public can not attend these meetings and would generally derive no benefit. The meetings are described as an [REDACTED] to handle Association business and for members to display and [REDACTED] arms and accessories. Also the Association lacks facilities that could be used for the safe firing of weapons. These meetings do not provide a public benefit, and, therefore, the meetings fail as an activity that would cause the Association to be considered exempt under section 501(c)(4) of the Code.

The Association also has some minor activities, which we consider incidental to its claim for exemption. The \$[REDACTED] a year the club contributes to [REDACTED] is not commensurate with the Association's income insofar as indicating an exempt purpose. The Association states that it supports [REDACTED] by obtaining range time and firearms training for them. When asked how many lectures and supervised shooting outings the Association sponsored for the [REDACTED] in the past two years, it failed to provide any information on past activities and noted there is one scheduled for [REDACTED]. Based on an analysis of the Association's activities it is concluded that they do not promote social welfare within the meaning of Section 501(c)(4) of the Code and the corresponding regulations.

Because the Association also compares itself to an organization exempt under section 501(c)(7) of the Code, we will consider that section also.

Section 501(c)(7) of the Code provides for the exemption from Federal income tax of clubs organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

[REDACTED]

Section 1.501(c)(7)-1(a) of the Regulations states that the exemption provided by section 501(a) of the Code for an organization described in section 501(c)(7) of the Code applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, but does not apply to any club if any part of its net earnings inure to the benefit of any private shareholder. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

In considering whether the Association could be exempt under section 501(c)(7) of the Code, we relied on Public Law 94-568, 1976-2 C.B. 596, which provides that a social club may receive up to 35 percent of its gross receipts, including investment income from sources outside its membership without losing exemption. Within this 35 percent amount, not more than 15 percent of the gross receipts should be derived from the use of a social club's facilities or services by the general public.

The gun show activity involves the public in a commercial manner as previously explained. The gross receipts that result from these dealings violate the guideline set out by Public Law 94-568, cited above, which sets a standard of fifteen percent as the maximum amount of gross receipts a social club can receive from the general public and still be considered exempt. The Association indicated [REDACTED] percent of its receipts from the show were from the general public, which results in [REDACTED] percent of its total gross receipts from [REDACTED], through [REDACTED], being received from the general public as shown below:

The following analysis is based on the financial information presented in the table on page 5.

[REDACTED] percent of the gun shows' gross receipts of \$[REDACTED] is \$[REDACTED] which divided by the Association's total gross income for the same period of \$[REDACTED] results in a ratio of nonmember income to total gross income of [REDACTED]%, which exceeds the [REDACTED]% limit on nonmember income.

Profits derived from nonmembers, unless set aside, subsidize the club's activities for members and result in inurement within the meaning of 501(c)(7) of the Code. As previously mentioned, the Association has stated it has intended its revenues to be used for the benefit of its members. The Association has not set aside funds to be used for charitable purposes, and, therefore, the facts and circumstances indicate that these receipts from nonmembers do result in inurement to the members of the Association.



-9-  
ENCLOSURE

[REDACTED]

The Association relied on Rev. Rul. 74-148, 1974-1 C.B., 172, which provided that a nonprofit organization that conducts regular bowling tournaments for its members qualifies for exemption under section 501(c)(7) of the code where its overall program is designed to effect a commingling of members for their pleasure and recreation. The awarding of cash prizes to tournament winners from tournament entry fees is not an inurement of net income to members. This comparison fails because in the above revenue ruling the funds expended for the benefit of members by the exempt organization were obtained from members, but in this case the Association depends on nonmember income as demonstrated above.

CONCLUSION

The assistance the Association provides to [REDACTED] and the [REDACTED] is incidental in relation to its other activities. The Association's two major activities, the gun show and the monthly meetings, fail to promote social welfare within the meaning of section 501(c)(4) of the Code and the related Regulations. Therefore, the Association does not qualify for exemption under section 501(c)(4) of the Code. The Association's gun show activity results in inurement to members by virtue of the profits resulting from the rental of display space to nonmembers. A portion of these profits have been used to offset the expenses of the Association and thus reduce the amount of dues members would have to pay. The balance of the profits are accumulated for future use by the members. Thus the Association, because of this inurement, does not qualify for exemption under section 501(c)(7) of the Code.